

OCT 23 2003**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT****CATHY A. CATTERSON
U.S. COURT OF APPEALS****HENRY VERNON WALLACE,****Petitioner - Appellant,****v.****JOHN IGNACIO, Warden,****Respondent - Appellee.****No. 02-17509****D.C. No.****CV-99-00351-DWH/RAM****MEMORANDUM***

**Appeal from the United States District Court
for the District of Nevada
David Warner Hagen, District Judge, Presiding**

**Argued and Submitted October 10, 2003
San Francisco, California**

Before: HAWKINS, THOMAS, and CLIFTON, Circuit Judges.

Nevada state prisoner Henry Vernon Wallace appeals the dismissal as untimely of his 28 U.S.C. § 2254 habeas petition challenging his conviction for murder in the second degree. The district court found that, because Wallace's conviction became final before AEDPA's effective date of April 24, 1996, he had

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until April 23, 1997 to file his federal habeas petition. The court thus held that Wallace's petition was untimely filed on August 23, 1999. The court also found that Wallace was not entitled to either statutory or equitable tolling of the statute. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we vacate the dismissal and remand for further development of the record.

The district court's order predated our decisions in Lott v. Mueller, 304 F.3d 918 (9th Cir. 2002) and Spitsyn v. Moore, No. 02-35543, 2003 WL 22271356 (9th Cir. August 5, 2003). Lott and Spitsyn hold that equitable tolling may be applicable under circumstances similar to the ones presented here. Thus, we vacate the judgment of the district court and remand with instructions to conduct an evidentiary hearing on whether tolling of the statute of limitations is appropriate in this case. We need not, and do not, reach the merits of any other issue urged on appeal.

VACATED AND REMANDED.